

STATE OF MICHIGAN
COURT OF APPEALS

KERRIE L. WOLFE, a protected person, by
KAREN WOLFE, guardian,

UNPUBLISHED
February 18, 2003

Plaintiff-Appellant,

v

OAKLAND COUNTY ROAD COMMISSION
and CITY OF TROY,

No. 233910
Oakland Circuit Court
LC No. 99-014729-NO

Defendants-Appellees.

Before: O’Connell, P.J., and Fitzgerald and Murray, JJ.

PER CURIAM.

Plaintiff Kerrie L. Wolfe,¹ by her guardian, Karen Wolfe, appeals as of right from the trial court’s order that granted summary disposition to defendants Oakland County Road Commission and City of Troy in this personal injury action. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On June 1, 1997, plaintiff Kerrie Wolfe was seriously injured when the car she was driving collided with another vehicle at the intersection of Long Lake Road and Livernois in the Troy. Plaintiff filed suit against the Oakland County Road Commission (OCRC) and the City of Troy, alleging that the accident was caused by a malfunctioning traffic control signal at the intersection. Defendant OCRC moved for summary disposition on governmental immunity grounds, citing the Michigan Supreme Court’s recent decision in *Nawrocki v Macomb Co Rd Comm*, 463 Mich 143; 615 NW2d 702 (2000), which held that the highway exception to governmental immunity, MCL 691.1402(1), does not allow claims premised on areas of special danger or the installation, maintenance or improvement of traffic control devices. Defendant city also moved for summary disposition, arguing that the subject intersection was under the exclusive jurisdiction of the OCRC. Following a hearing, the trial court granted summary disposition to both defendants.

On appeal, plaintiff first argues that *Nawrocki* should be given prospective effect only. Until recently, a conflict had existed in this Court whether *Nawrocki* was to be given retroactive

¹ The lower court record is inconsistent in its spelling of plaintiff’s first name, using either “Keri” or “Kerrie.” We have adopted the spelling used in plaintiff’s appeal brief, i.e., “Kerrie.”

or prospective effect. The panel in *Sekulov v Warren*, 251 Mich App 333; 650 NW2d 397 (2002), held that the decision was to be given prospective effect only. Subsequently, the panel in *Adams v Dep't of Transportation*, 251 Mich App 801; 651 NW2d 88, issued 6/7/02 (No. 230268), vacated 251 Mich App 801 (entered 7/2/02), held that, but for *Sekulov*, it would have concluded that *Nawrocki* should be given retroactive effect, thereby creating a conflict under MCR 7.215(I). Thereafter, a special panel was convened to resolve the conflict. *Adams v Dep't of Transportation*, 253 Mich App ____; ____ NW2d ____ (No. 230268, issued 10/11/02). The special panel held that *Sekulov* was wrongly decided and that *Nawrocki* should be given retroactive effect. *Id.*, slip op at 5.

Plaintiff next argues that the present facts are distinguishable from *Nawrocki* because, unlike in that case, the OCRC elected to install a malfunctioning traffic signal at the intersection, which then became a part of the improved portion of the highway designed for vehicular travel. Plaintiff's reasoning is faulty. In *Nawrocki*, the Court explained, *id.* at 183-184:

The state and county road commissions' duty, under the highway exception, is only implicated upon their failure to repair or maintain the actual physical structure of the roadbed surface, paved or unpaved, designed for vehicular travel, which in turn proximately causes injury or damage. A plaintiff making a claim of inadequate signage, like a plaintiff making a claim of inadequate street lighting or vegetation obstruction, fails to plead in avoidance of governmental immunity because signs are not within the paved or unpaved portion of the roadbed designed for vehicular travel. Traffic device claims, such as inadequacy of traffic signs, simply do not involve a dangerous or defective condition in the improved portion of the highway designed for vehicular travel. [Citation omitted.]

Furthermore, in *Adams, supra*, the plaintiff's husband was seriously injured when he collided with another vehicle at an intersection with a disabled traffic signal. Relying on MCL 691.1402(1) and *Nawrocki*, this Court upheld the grant of summary disposition in favor of the defendant on governmental immunity grounds. *Adams, supra*, slip op at 1, 5. Thus, the fact that plaintiff's claim arises from an installed traffic signal that malfunctioned, as opposed to missing or inadequate signage, is of no moment.

We also reject plaintiff's argument that MCL 257.610(a) creates a duty on the part of the OCRC to maintain and repair existing traffic signals and that tort liability for violation of this statutory duty falls within the exception to governmental immunity under MCL 691.1402.

A provision of the Motor Vehicle Code, MCL 257.610(a), states:

Local authorities and county road commissions in their respective jurisdictions *shall place and maintain* such traffic control devices upon highways under their jurisdiction *as they may deem necessary* to indicate and to carry out the provisions of this chapter or local traffic ordinances or to regulate, warn or guide traffic. All such traffic control devices hereafter erected shall conform to the state manual and specifications. [Emphasis added.]

The *Nawrocki* Court noted the existence of MCL 257.610(a), as well as MCL 257.609(a), which applies to the state highway commission, and stated:

We are confident that our holding today is also reinforced by the fact that the duty implicating the installation, maintenance, repair, or improvement of traffic signs is expressly created under statutes separate from the highway exception.

* * *

Subsections 609(a) and 610(a) describe the state and county road commissions' "duty" regarding traffic control devices, obviously implicating traffic signs, in terms of what each agency "deems necessary." This is the language of discretion, not the imposition of a duty, the breach of which subjects the agencies to tort liability—as opposed, perhaps, to political liability. [*Nawrocki, supra* at 181-182.]

Again, plaintiff's attempt to draw a distinction between missing or inadequate signage and malfunctioning installed signage is unpersuasive. In light of *Nawrocki* and *Adams*, a malfunctioning traffic signal does not fall within the highway exception to governmental immunity nor does it constitute the breach of any statutory "duty" that would subject the defendant to tort liability.

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray